86-404 (1)

Supreme Court, U.S.
FILED
JUN 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

(case #)

U.S. Supreme Court

October, 1985

CERTIORARI

D.D.WHALEY-Petitioner v USA Et Al Respondents

CRIMINAL TRIAL, CONVICTION, APPEAL ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION ON WRIT OF CERTIORARI

Dorian D. Whaley
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Atlantic City, NJ 08401
(609) 348-0977

Dorian D Whaley

Was Whaley's criminal conviction just under Law United States Code Title 18 S 2314:?

When the Court Adopted the U.S. Attorney's jury instruction and erroneously instructed the jury "if there is no market value for the property the jury should consider other reasonable methods."

(R.T. 259) (R.T. 283)

When the U.S. did not present a scintilla of factual evidence to prove Whaley was ever at any time or place in possession of the article alleged transported and the Court erroneously instructed the jury; "You may from those facts draw the inference that the boat was transported in inter-state commerce by the accused", making the assumption of possession of the article by the accused.

(R.T. 211) (R.T. 261)

When upon controversy raised by Whaley concerning justness of vessel classified as goods and merchandise the Court at preliminary hearing directed "Vessel was subject of commerce and is chattels and as such is goods and merchandise, " bringing said article into the scope of the Statute and forclosed from the jury deliberation upon the matter (So. District Court Ca. Hearing U.S. v Whaley 84-0600G October 3, 1984)

When Whaley did not have speedy trial as Court automatically, unjustly excluded days from Whaley's statutory mandated trial schedule assigning automatic delay to Whaley upon his filing a pretrial motion yet none will or can describe any circumstances raised in Whaley's motion which would result in the delay attributed by the Court to the motion.

(Opinion April 25, 1986 Ninth Circuit Court of Appeals #85 5026 pp 1-4)

"I hereby object to being charged with transportation of vessel under Title 18 USC sec 2314. Vessel is not defined under Title 18 USC sec. 2134 nor has vessel been defined by any trial proceedings on record to date under Title 18 USC sec. 2314.

The indictment wherein I am charged with this offense amounts to a false indictment. The Court having rectitude will the court countenance and approve further proceedings with this indictment."

ENTIRE PERTINENT TEXT OF WHALEYS MOTION

When Whaley was further denied due process of law as the Court issued subpoenas to foreign nationals and Whaley was subjected to a single person showup for no exigent circumstance before all the foreign nationals at the same time who the next day identified Whaley at trial. Two of which committed purjury proscribed by United Stated Code Title 18 S 1623 (C). (R.T. November 16, 1984 20-24) (R.T. 61) (R.T. 280)

When Whaley was denied effective assistance of Counsel as Squibb raised obstacles to Whaley's pursuit of due process, refusal to pursue in Whaley's interest relief mandated by United States Code Title 18 S 3164, did not take open exception with the Court concerning the owners testimony as the sole evidence of value of the article alledged transported. Such is against the basic rules of evidence in Federal criminal procedure. Federal Rule 104 (b)

When the Court over Whaley's designs assigned Counsel and denied Whaley's right to proceed in propria persona. (R.T. 9, 10)

When bail for Whaley was punitive, excessive, capricious and whimsical.

When Whaley's lawful civil rights were injured and oppressed as the record for appeal was falsly presented certified forwarded as complete by the Reporter Clerk and Deputy when the order for the record and subsequent Court documents show there were absent parts in the certified complete as ordered record. (Certificate of Record Court Documents)

When Whaley suffers stigma of felony conviction and continued constraints attendant to custodial restrictions.

When the Court denied Whaley his selected expert witness language translator.

R.J. COUGHLIN, JR.

MICHAEL SQUIBB

RICHARD BARNETT

STEPHEN HOFFMAN

DAVID CURNOW

CARL YAEKEL

EZEKIEL CORTEZ

JUDGE EARL B. GILLIAM

A.U.S.A. JUDITH HAYES

JUDGE GOODWIN
JUDGE SKOPIL
JUDGE ALARCON
JUDGE TANG — NINTH CIRCUIT COURT OF APPEALS
JUDGE BOOCHEVEL — JUDGES
JUDGE WALLACE
JUDGE HUG
JUDGE NOTRIS

REPORTER THELMA STROBEL

CLERK - WM. W. LUDDY

DEPUTY CLERK - GREGORY J. MEDEIROS

WITNESSES

GEORGE MILLAR
JORGE MURILLO
DAVILA-GUTERREZ
GAMEZ-HOLGUIN
JESUS FLORES
DOUGLAS K. LAYTON
DAVID L. OLEK
JACK DIVINE
ROBERT CAPOTINACH
ROBERT E. HAMMOND

Modified judgement commitment order February 20, 1985 of judgement commitment order November 21, 1984 by Earl B. Gilliam U.S. District Judge So. District, Ca.

United States Code Title 18 S 3772 Supreme Court jurisdiction of appeal matters.

United States Code Title 18 S 2314
18 S 3164
18 S 3161
18 S Rule 52 (b)
Eighth Amend.
Fifth Amend.
Fourteenth Amend.
Sixth Amend.

The Court did not have jurisdiction, Whaley's due process, equal protection under law have been left out by the Court throughout Whaley's brush with criminal justice. Capricious excessive bail, unlawful incarceration, no speedy trial, counsels ineffective assistance unlawful I.D. sighting procedure, preemptive exclusion by Court of controversy rightly heard by jury, purjured witnesses, Court issued unlawful subpoenas Court records falsy certified by reporter and clerk.

Non-jurisdiction, preemptive exclusions of material facts from jury deliberation, due process concerns left out by Court, deprived Whaley of Constitutional guaranteed rights and oppressed and injured Whaley in the free exercise of Civil Rights all wide departures from an accepted, usual course of judicial proceedings, all sanctioned by the Ninth Circuit Court of Appeals.

Issuance of subpoena to foreign nationals, the automatic exclusion of time by the Court without showing cause within the provisions of 18 S 3161 h 1 (F), denial of relief for accused within the provisions of 18 S 3164, are decisions which should be made by this Court. In light of Dowling, S.C. No. 84-5489, decided June 28, 1985, classification of "Vessel" as goods and merchandise and as Appeals Court cites merely one instance of conviction in like prosecution; abuse of discretion by District Court and how Whaley's was flagrantly prejudiced as set forth in an ineffective assistance of Counsel claim, are decisions Whaley believes are in conflict with applicable decisions of the High Court.

18 S 2314 "Whoever transports in interstate or foreign commerce any goods, wares, merchandise securities or money of the value of $5,000.00 or more, knowing the same to have been stolen, converted or taken by fraud."

18 S 3164 (a) "The trial or other disposition of cases involving-----
(1) a detained person who is being held in detention solely because he is awaiting trial.
(b) The trial of any person described in sub-section (a) (1) or (a) (2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161 (h) are excluded in computing the time limitation specified in this section.
(c) Failure to commence trial of a detainee as specified in sub-section (b) through no fault of the accused or his Counsel or failure to commence trial of a designated releases as specified in subsection (b), through no fault of the Attorney for the Government, shall result in the automatic, review by the Court of the conditions of release. No detainee as defined in sub-section (a) shall be held in custody pending trial after the expiration of such ninety day period required for the commencement of his trial."

18 S 3161

(a) "In any case involving a defendant charged with an offense the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the Counsel for the Defendant and the Attorney for the Government set the case for trial on a day certain or list it for trial on a weekly or other short term trial calendar at a place within the judicial district, so as to assure a speedy trial."

(c) (1) "In any case in which a plea of not guilty is entered the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment or from the date a defendant has appeared before a judicial officer of the Court in which such charge is pending, which ever date last occurs.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed or in computing the time within which the trial of any such offense must commence;

(1) Any period of delay resulting from other proceedings concerning the defendant including but not limited to---

(f) delay resulting from any pre trial motion from the filing of the motion through the conclusion of the hearing on, or, other prompt disposition of such motion;"

FIFTH AMENDMENT - "no person shall be deprived of life, liberty, or property, without due process of law."

SIXTH AMENDMENT - "his defense"

EIGHTH AMENDMENT - "excessive bail shall not be required"

FOURTEENTH AMENDMENT - "Sec. 1, no state shall deprive any persons of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

18 RULE 52(b) - "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court."

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT APRIL 25, 1986

UNITED STATES OF AMERICA,
Plaintiff-Appellee, No. 85-5026
v. DC No. CR-84-00600-01
DORIAN DOUGLAS WHALEY OPINION
Defendant-Appellant.

Before: WALLACE, HUG, and NORRIS, Circuit Judges.

HUG, Circuit Judge:

Appellant Dorian Whaley was convicted under 18 U.S.C. § 2314 for transporting a stolen trimaran from Coronado, California to Cedros Island, Mexico. He now appeals the conviction, arguing that (1) the indictment was invalid because a boat is not "goods, wares, (or) merchandise" for purposes of section 2314; (2) he did not receive a speedy trial as required by 18 U.S.C. § 3161; and (3) he was denied effective assistance of counsel. We affirm.

JUDGMENT AND COMMITMENT

United States District Court

FOR THE

SOUTHERN DISTRICT OF CALIFORNIA NOV. 21, 1984

00725

United States of America

v. No. 84-0600-G-Criminal

DORIAN DOUGLAS WHALEY (1)

IT IS ADJUDGED that the defendant upon his plea of not guilty and a jury verdict of guilty,
has been convicted of the offense of transportation of stolen goods, in violation of 18 USC 2314, as charged in the indictment in one count, and the Court having asked the defendent whether, he has anything to say why judgment should not be pronounced, and no, sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the maximum period of time authorized by law and for a study as prescribed in 18 USC 4205(d), the results of such study to be furnished this Court within (3) months or such additional time not exceeding three (3) months as the Court may grant, whereupon the sentence of imprisonment here imposed shall be subject to modification in accordance with 18 USC 4205(c)

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Earl B. Gilliam
United States
District Judge

JUDGMENT AND COMMITMENT (Rev.2-68) Cr. Form No. 25

United States District Court

FOR THE

SOUTHERN DISTRICT OF CALIFORNIA FEB. 20, 1985

United States of America No. 84-0600-G-Criminal

v. MODIFIED JUDGMENT

DORIAN DOUGLAS WHALEY (1) AND COMMITMENT

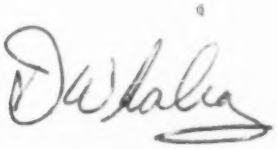
AND NOW on this 19th day of February, 1985, the Court having now received and considered the report of such study, and the defendant being present and with counsel, Stephen Hoffman,

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years and pursuant to 18 USC 4205(b)(2), the Court specifies that the defendant shall become eligible for parole at such time as may be determined by the United States parole Commission.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Earl B. Gilliam
United States
District Judge

A copy of petition on CERTIORARI was served the Solicitor General , Department of Justice, Washington, D. C. 20530.



UPON MY OATH BEFORE GOD PURSUANT TO S.C. RULE 19. 3., S.C. RULE 28 A COPY OF PETITION ON WRIT OF CERTIORARI WAS SERVED BY MAIL ON THE PERSON(s) LISTED BELOW:

- Judge Earl B. Gilliam
  U.S. Court House
  940 Front St.
  San Diego, Ca. 92101
- Judith Hayes, A.U.S.A.
  U.S. Court House Rm. 5N19
  940 Front St.
  San Diego, Ca. 92189
- Clerk
  Court of Appeals, Ninth Circuit
  7th & Mission Sts., P.O. Box 547
  San Francisco, Ca. 94101
- Reporter Thelma Strobel
  U.S. District Court Dept. 7
  940 Front St.
  San Diego, Ca. 92189
- Clerk Wm. W. Luddy, Deputy Clerk Gregory J. Medeiros
  U.S. District Court
  940 Front St.
  San Diego, Ca. 92189
- U.S. Attorneys Office, Appellate Division
  940 Front St.
  San Diego, Ca. 92101

Mailed June 24, 1986
Donan Dwkaley
Atlantic City, New Jersey 08401